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CS Docket No.

97-80

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MAR 12 2007

March 12, 2007

VIA HAND DELIVERY

Federal Communications Commission
Media Bureau
P.O. Box 358205
Pittsburgh, PA 15251-5205

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MEDIA BUREAU

Re: Petition for Waiver - CS Docket No. 97-80

CSR 7142-Z

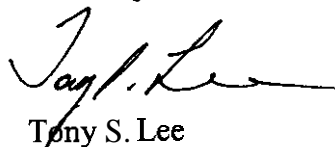
Dear Sir/Madam:

On behalf of Radcliffe Telephone Company ("Radcliffe"), transmitted herewith are an original and four (4) copies of its Petition for Waiver. Specifically, Radcliffe petitions the FCC for waiver of the set-top box integration ban set forth in of Section 76.1204(a)(1) until December 31, 2009. The required filing fee of \$1,250.00 in the form of a check made payable to the Federal Communications Commission, a Form 159, and **an** original of this letter are also attached.

Acknowledgement and date of receipt of this filing is requested. A duplicate copy of this filing is provided for this purpose.

Should you have any questions concerning this matter, please contact the undersigned at 202-857-1707.

Sincerely,


Tony S. Lee

Counsel for Radcliffe Telephone Company

Enclosures

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Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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MAR 16 2006
MEDIA BUREAU

In the Matter of)	
)	
Radcliffe Telephone Company)	
)	CSR-_____
Petition for Waiver of Section 76.1204(a)(1))	
of the Commission's Rules)	
)	
Implementation of Section 304 of the)	CS Docket No. 97-80
Telecommunications Act of 1996)	
)	
Commercial Availability of Navigation Devices)	

PETITION FOR WAIVER

Radcliffe Telephone Company ("Petitioner"), by its undersigned attorneys, and pursuant to Sections 1.3 and 76.7 of the Commission's rules,¹ respectfully petitions the FCC for waiver of the set-top box integration ban set forth in Section 76.1204(a)(1) until December 31, 2009.² As further discussed below, navigation devices that are compatible with Petitioner's all-digital video distribution network and that comply with the FCC's integration ban are not available, and a waiver is warranted to enable Petitioner to continue to provide and expand its advanced digital video service offerings in the small rural communities that it serves. In support hereof, Petitioner states as follows:

I. BACKGROUND

Petitioner is a multichannel video programming distributor ("MVPD") that serves small historically underserved rural communities in Iowa. Petitioner currently provides video service to approximately 150 households in the Radcliffe Iowa service area through an all-digital

¹ 47 C.F.R. §§ 1.3, 76.7.

² 47 C.F.R. § 76.1204(a)(1)

Copper/Fiber video distribution network. Petitioner is one of several small MVPDs in Iowa that obtains video programming through a central distribution network connected to a headend operated by Iowa Network Services, Inc. ("INS"). Due to the all-digital nature of Petitioner's system, it is necessary for all video service subscribers to use a set-top box in order to access video programming. Subscribers cannot view any channels without using digital set-top boxes because no analog television signals are distributed through Petitioner's video system. Petitioner's all-digital network enables it to provide service using bandwidth more efficiently, and to provide additional high-quality and innovative features such as high definition video programming and video-on-demand (both planned for rollout in the near future), and broadband Internet services (currently being provided), without the overhead and expense of transmitting and maintaining legacy analog television signals.

Petitioner utilizes set-top boxes that incorporate "middleware," that is, software that allows the set-top boxes and MVPD systems to communicate with each other. Middleware coordinates, among other things, the electronic program guides, video-on-demand programs, pay-per-view services, interactive television capabilities, transmission of data, and conditional access functions of the set-top box. The middleware ~~vendor of Petitioner's video~~ system utilizes a downloadable conditional access solution ("DCAS") supplied by Widevine. The Widevine system **uses** proprietary software and decryption algorithms to **permit** viewers to access video programming. Set-top boxes used in Petitioner's video system must be specifically configured and provisioned for use with the Widevine solution. Through INS, Petitioner has contacted its middleware provider in an attempt to **confirm** that its implementation of the Widevine conditional access solution complies with the **integration** ban requirement to fully separate the

security element from the basic navigation **device**.³ Although some of the middleware providers have acknowledged receipt of INS's inquiry, to date, none of the providers have been willing to confirm that their conditional access implementations comply with the integration ban

As further discussed below, grant of the requested waiver is necessary in order to permit Petitioner to continue to provide and expand the provision of advanced high-quality video and related digital services over its all-digital distribution network to subscribers located in rural communities. Unlike large MVPDs, such as Comcast or Cox, Petitioner is a very small provider that does not have the market power or resources to influence manufacturer timetables to develop conditional access solutions that comply with the FCC's integration ban. Petitioner has diligently made inquiries with its middleware provider to determine when an integration ban-compliant solution will be available; however, those providers have not committed to making compliant devices available before the effective date of the integration ban, which is July 1, 2007.⁴

n. DISCUSSION

A. Standard for Waiver

Beginning on July 1, 2007, pursuant to ~~Section 76.1204(a)(1)~~, Petitioner will be prohibited from using or leasing set-top boxes that perform both conditional access and other functions in a single integrated device. The purpose of this rule is to ensure common reliance by cable operators and consumer electronics manufacturers on the same conditional access mechanism. Specifically, the FCC stated in its 2005 *Deferral* Order that "the concept of common reliance is intended to assure that cable operator development and deployment of new

³ See, *Implementation of Section 304 of the Telecommunications Act of 1996; Commercial Availability of Navigation Devices*, 13 FCC Rcd 14775, 14808, ¶ 80 (1998); 47 C.F.R. § 76.1204(a)(1).

⁴ *Implementation of Section 304 of the Telecommunications Act of 1996; Commercial Availability of Navigation Devices*, 20 FCC Rcd 6794, 6802-03 ¶ 13 (2005) ("2005 *Deferral Order*").

products and services does not interfere with the functioning of consumer electronics equipment or the introduction of such equipment into the commercial market for navigation devices.”⁵

Generally, the Commission’s rules may be waived only for good cause shown.⁶ The FCC has consistently ruled that a waiver is appropriate only if the requested relief would not undermine the policy objective of the rule in question, special circumstances warrant a deviation from the general rule, and that such deviation will serve the public interest’ The policy objectives of Section 76.1204(a)(1) of the Commission’s rules would not be undermined because the market for the commercial availability of non-integrated devices will not be affected by granting a waiver to Petitioners. Furthermore, special circumstances exist here because a conditional access solution that provides for common reliance is not available to Petitioner. Absent a waiver, Petitioner would be required to cease providing video service to rural subscribers until an appropriate solution is available. The public interest would be served by granting a waiver to Petitioner to permit the company to continue to provide and expand advanced video service to rural subscribers in Iowa.

B. The Policy Objectives of the Commission’s Integration Ban Would not be Undermined by Grant of the Requested Waiver

As noted above, the purpose of Section 76.1204(a)(1) is to ensure common reliance by cable operators and consumer electronics manufacturers on the same conditional access mechanism. Although the integration ban may confer a general benefit to consumers as a whole, the grant of a waiver to Petitioner, who is an operator of a small rural video system, would have negligible impact as Petitioner does not have any ability whatsoever to influence manufacturers

⁵ 2005 Deferral Order ¶ 30

⁶ 47 C.F.R. § 1.3

⁷ See generally, *WAT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969), cert. denied, 409 U.S. 1027 (1972); *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164 (D.C. Cir. 1990).

to build devices that comply with the FCC's integration ban. Moreover, application of the rule to rural MVPDs, such as Petitioner, which serves sparsely populated and largely agricultural areas, would have an effect that Congress expressly directed the Commission to avoid. Specifically, in enacting the Telecommunications Act of 1996, Congress directed the FCC to implement regulations to encourage the deployment of advanced telecommunications capabilities to all Americans.⁸

As further discussed below, Petitioner does not have any options available to provide set-top boxes to its customers that comply with the FCC's integration ban. Strict adherence to the letter of the rule would result in denying rural subscribers access to advanced all-digital video and related services, while allowing carriers that have not made the commitment to upgrade to new and more advanced technologies, such as the all-digital network employed by Petitioner, to continue to provide basic legacy cable services. Such an outcome would frustrate the intent of Congress to promote, rather than deny, advanced services to all Americans, particularly when Congress also directed the Commission to "avoid actions which would have the effect of freezing or chilling the development of new technologies and services."

C. A Waiver is Necessary Because a Compliant Solution is not Available to Permit Petitioner to Continue to Provide All-Digital Service to its Customers After the Effective Date of the Integration Ban

As discussed above, Petitioner utilizes a conditional access system that is provided by Widevine. Although the Widevine solution may comply with the integration ban requirement to provide security that is separable from the navigation device, at this time, Petitioner's middleware provider has not confirmed this to be the case as some decryption or other function

⁸ Telecommunications Act of 1996, Pub. L. No. 104-104, § 706, 110 Stat. 56,153 (*codified in* notes under 47 U.S.C. § 157).

⁹ Joint Explanatory Statement of the Committee of Conference, S. Conf. Rep. 104-230, 104th Cong., 2d Sess. at 181 (19%).

essential to the conditional access system may be integrated into the set-top **box**. Regardless of whether some necessary security function is incorporated into the set-top box, Petitioner believes that a waiver is necessary because the Widevine solution as implemented by its middleware provider does not satisfy the common reliance requirement in the FCC's rules.

The purpose of common reliance is to enable customers to purchase set-top boxes from retailers for use on any cable system. However, due to the proprietary nature of the Widevine solution, the requirement for common reliance is not met. Widevine is a proprietary downloadable conditional access system. The FCC has determined that DCAS "comports with the [Section 76.1204(a)(1)] ban on the inclusion of conditional access and other functions in a 'single integrated device' because, by definition, the conditional access functionality of a device with downloadable security is not activated until it is downloaded to the box by the cable operator. Thus, at the time the consumer purchases the device, the conditional access and other functions are not 'integrated.'"

However, Widevine's DCAS does not appear to provide for common reliance as required by the Commission. In the **2005 Deferral Order**, the FCC determined that DCAS is likely to facilitate a competitive navigation device market, and aid in the interoperability of a variety of digital devices." However, Widevine is a closed proprietary DCAS, and it cannot be used with set-top boxes that have not been configured with the appropriate chipsets or other hardware and software. A customer with a set-top **box** using a non-Widevine DCAS would not be able to use that device with Petitioner's video system. Verizon has observed DCAS must be open, universally interoperable, and network-agnostic in order to meet the Commission's common reliance requirement

¹⁰ *2005 Deferral Order* ¶ 35.

¹¹ *2005 Deferral Order* ¶ 3.

Petitioner is a very small MVPD providing video service to rural communities in Iowa. Given the insignificant size of its subscriber base when compared to those of the larger MVPDs, Petitioner does not have any ability to influence manufacturers or middleware providers to develop conditional access solutions that comply with the requirement for common reliance. Moreover, Petitioner does not have the resources or the expertise to develop such a solution on its own, and the company is completely dependent on outside providers for its set-top boxes and middleware. Accordingly, these special circumstances warrant waiver of the FCC's integration ban as no other viable solution is available to Petitioner that meets the Commission's requirement for common reliance.

D. Grant of the Waiver is in the Public Interest Because it will Promote the Provision of Advanced All-Digital Video Television Service in Rural Areas

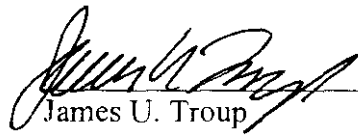
In order to continue to provide service to its customers, all of whom are located in rural areas in Iowa, and to maintain the viability of its video system, Petitioner must use the set-top boxes and middleware provided by its current suppliers as there are no other alternatives in the marketplace to the conditional access solutions currently being used. After July 1, 2007, without the requested waiver, Petitioner would not be able to offer its subscribers the use of set-top boxes necessary to access even the basic features of its video system due to its all-digital transmissions, thereby disconnecting its customers from a primary source of news, entertainment, and advanced services available to video subscribers located in densely populated urban areas. Rural subscribers already have few, if any, choices for video programming and advanced services, and they may be located too distant from terrestrial television stations to receive reliable and good quality over-the-air transmissions. A waiver is necessary to permit subscribers to continue to enjoy the benefits that Petitioner's advanced all-digital video service offers, and to allow

Petitioner to continue to expand its service to subscribers that would not otherwise have access to high-quality video programming and services in rural areas.

111. **CONCLUSION**

WHEREFORE, for the foregoing reasons, Petitioner requests that the Commission grant its Petition for Waiver of the integration ban set forth in Section 76.1204(a)(1) until December 31, 2009

Respectfully submitted.



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Counsel for Radcliffe Telephone Company

Date: March 12, 2007

CERTIFICATION

I, Edwin **A** Drake, hereby certify under penalty of perjury that I am authorized to make this certification on behalf of Radcliffe Telephone Company, that I have read the foregoing document and know the contents thereof; and that the same are true of my **own** knowledge, except to those matters therein stated upon information and belief, and as to those matters I believe them to be true



Edwin **A** Drake
Manager
Radcliffe Telephone Company

2-28-07

Date